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2006 JUN 12 P 4: 53

June 12, 2006

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5732

Dear Mr. Jordan:

The undersigned represent the Democratic Party of Hawaii ("DPH") and the Maine Democratic State Committee ("MDP"), and their Treasurers collectively in the subject MUR generated by a complaint filed by the Republican State parties of Hawaii and Rhode Island. The complaint is grounded on legal contributions made by three Democratic state party committees, the DPH, the MDP and the Massachusetts Democratic Party, to Matt Brown for U.S. Senate in December 2005, in the total amount of \$25,000. The complaint alleges that these three state party committees received contributions from individuals who were solicited by the Matt Brown for Senate campaign and speculates that the respondents violated the contribution limits in 2 U.S.C. § 441a(a)(1) by making earmarked contributions.<sup>1</sup> The complaint argues that these contributions by individual donors were made to evade contribution limits by these individual donors to the Brown campaign. Respondents DPH and MDP deny these allegations and present affidavits and documentary evidence that the individuals' contributions to the DPH and MDP were not earmarked in any way for the Matt Brown campaign and were entirely lawful.

<sup>1</sup> It appears that several exhibits noted in the complaint itself were not attached to the complaint received by Respondents from the Commission.

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## FACTS

In December 2005, DPH contributed \$5,000 and MDP contributed \$10,000 to the Matt Brown for Senate campaign. Later, the DPH received a \$6,000 contribution in January 2006 from Richard Bready that apparently was solicited by the Brown campaign and was deposited into DPH's federal account. Also in January 2006, the MDP received \$6,000 from Richard Bready and \$6,000 from Jeannie Lavine that apparently were solicited by the Brown campaign. Both of these contributions were deposited into the MDP's non-federal account.

## DISCUSSION

It is well established that a federal candidate may solicit contributions from a state party committee (each state party committee may separately contribute \$5,000 per election to a candidate for U.S. Senate (2 U.S.C. § 441a(a)(2)(A)). It is also well established that a federal candidate may solicit funds for a state party committee up to \$10,000 per person, per calendar year. 2 U.S.C. § 441a(a)(1)(D). In addition, an individual donor may contribute to a committee that is supporting the same federal candidate that such individual has already contributed the maximum amount. The contribution to the committee would count against that contributor's contribution limits to the candidate if (1) the contributor gave with the knowledge that a substantial portion will be contributed to, or expended on behalf of the benefiting candidate and (2) the contributor retained control over the funds. 11 C.F.R. § 110.1(h). In other words, the contribution must either be "earmarked" by the donor for the benefiting candidate or the donor must have been informed that their particular contribution would be used specifically to support a particular federal candidate. The Commission's regulations define "earmarked" as a "designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

In this matter, neither element of § 110.1(h) nor any element of § 110.6(b) is satisfied. First, although neither committee was involved in the solicitation of funds by the Matt Brown campaign, it is our belief and understanding that no representations were made to any donor who contributed to the DPH or MDP as a result of a solicitation by the Matt Brown campaign. Significantly, as demonstrated by sworn affidavits provided by Yuriko Sugimora, Treasurer of the DPH, and Maggie Allen, Executive Director of the MDP, neither Mr. Bready or Ms. Lavine made any requests of or provided any other notation or direction that could be considered earmarking to the DPH or MDP and lost complete control over the funds they contributed to the DPH and MDP. Thus, with respect to contributions received as a result of solicitation by the Matt Brown campaign, none of these contributions had any indicia of earmarking, either express or implied, by the contributors.

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Earmarked Contributions § 110.6

The Commission has had several opportunities to address the application of 11 C.F.R. § 110.1(h) in similar situations as presented in this matter. In each instance, the Commission has concluded that no violation of the FECA's limits had occurred.

In MUR 5520, the Commission dismissed a matter in which it was alleged that a member of Congress funneled funds to a state party committee in order to have that committee spend funds on behalf of his son in another Congressional race. In recommending dismissal of the case, the brief of the General Counsel noted "in light of recent Commission action addressing implied earmarking, the timing and amounts of transfers from the Tauzin II Committee to the RPL do not provide a sufficient basis to investigate any violations of the Act's provisions." MUR 5520, First General Counsel's Report, p.7 (May 31, 2005).

In MUR 4831/5274, the Commission did not pursue a violation against contributors whose contributions did not contain notations of direction or control by the donor, even in situations where a party solicitation suggested that the contributions were going to be used to support a particular candidate (the Commission pursued other contributions that were clearly earmarked for a federal candidate). This was based on a unanimous decision by the Commission to reject a recommendation by the General Counsel, and in the Statement of Reasons issued by two Commissioners explained their views regarding the matter. They opined, "unless the donor specifically earmarks his gift, we do not impose the original donor's limit on party spending, even though [*sic*] the donor believed that by giving to the party he could assist the party's nominees... Under the Act, a contribution subject to our earmarking rules must *in fact* be earmarked by the person making the contribution." MURs 4831 and 5274, Statement of Reasons of Vice Chairman Bradley A. Smith and Commissioner Michael E. Toner (December 1, 2003) (emphasis in original). Thus, absent specific evidence that the donor intended the contribution to be used to support a candidate, mere requests for funds that suggest that a portion of the contribution may be used to support a particular candidate is not enough to constitute earmarking. See also MUR 3620 (Democratic Senatorial Campaign Committee; tally system acceptable so long as "earmarked" contributions were returned).

In this matter, as noted above, other than the contributions themselves, neither the DPH nor MDP received any communications from either Mr. Bready or Mrs. Lavine. Specifically, these contributions came with no notation that would indicate that the contributions were earmarked for the Brown campaign, nor did they arrive with any other written document that would have indicated that the money was earmarked for the Brown campaign. See attached Affidavits of Yuriko Sugimora (for DPH) and Maggie Allen (for MDP). Thus, neither committee received any *earmarked* contribution as defined by 11 C.F.R. § 110.6(b)(1).

In addition, contributions solicited by the Brown campaign to the MDP were deposited into a non-federal account. Therefore, there could not have been any use of the funds solicited by the Brown campaign to support his campaign by the MDP. In MUR

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5125, the General Counsel concluded that a contribution that was allegedly earmarked for a federal candidate could not have been earmarked since the party committee that received the contribution demonstrated that the contribution was, in fact, deposited into a non-federal account. Thus, the committee in that matter could not have used the funds to support the federal candidate for whom the contribution was alleged to have been earmarked. The same holds true in this instance with respect to the MDP.

Knowledge of Committee Support and Control of the contributions § 110.1(h)

MURs 5445 and 5019 further support our view that no earmarking occurred in this matter. In MUR 5445, the General Counsel's office concluded that the contributor would have to *know* that the contribution was going to be given to a particular candidate in order for § 110.1(h)(2) to apply. In MUR 5019, in dismissing the application of § 110.1(h) to an apparent earmarking scheme, the Office of General Counsel reasoned "although contributors were likely aware that the Keystone Federal PAC would contemporaneously contribute to the Porter and Ensign Committees, it does not appear that the contributors knew that a portion of their *own contributions* would be given to a specified candidate." First General Counsel's Report, pp.27-28. Furthermore, in MUR 3620, the Commission approved of a "tally" system in which the Democratic Senatorial Campaign Committee would give donors the ability to attribute their contribution to a particular candidate so long as the attribution was not a designation to use their particular contribution to support that candidate. Rather, the tally system was a mechanism to give that "tallied" candidate credit for raising funds for the DSCC. Ultimately, the DSCC would use the "tally" system as a factor in determining how much support to provide to that particular candidate. Thus, as long as the DSCC retained the ultimate discretion as to spend such "tallied" funds, no earmarking had occurred even though that federal candidate for whom the DSCC supported had solicited the funds for the support of both their candidacy, as well as the support of other federal candidates supported by the DSCC.

Although the DPH and MDP were not specifically involved in the solicitation by the Matt Brown campaign on behalf of their respective committees, the committees believe that testimony from other respondents will confirm that no donors who were solicited on their behalf were told or otherwise notified that the DPH or MDP would be providing any financial support to the Matt Brown campaign. Thus, notwithstanding the fact that the Commission's precedent does permit some knowledge of the use of contributed funds, in this matter, the lack of *any* representation to these donors precludes any control or direction that they could have had over their contributions to the DPH or MDP. Ultimately, their lack of any knowledge or control eliminates any application of § 110.1(h) in this matter.

Conclusion

The Commission has, itself, set a very high bar for the investigation of earmarking cases. Even in the face of a factual pattern that represented cross-solicitations by two committees, the Commission concluded that a complaint must allege a "sufficient

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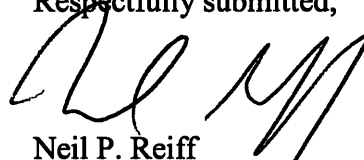
specific allegation" to warrant an investigation. See MUR 5406. In this matter, the complainants have not alleged any fact, nor do any exist, that any donor solicited by the Matt Brown campaign was either provided with information that their contribution would be donated to the Matt Brown campaign, nor did any donor direct the DPH or MDP that their contribution, either expressly or impliedly, be donated to the Matt Brown campaign. The complainants assume from the chronology of the contributions, that there was some direction or control over the DPH and MDP contributions to the Brown campaign. However, such assumptions, even if they are assumed *arguendo* to be true, are insufficient to support a reason-to-believe finding, particularly in the face of the sworn affidavits and the documentary evidence demonstrating that the complainant's assumptions are incorrect. Even without this evidence, the law requires more than a mere hope, or even agreement, between two committees that they will mutually support each other.

In sum, this matter must be dismissed for lack of a specific credible allegation that earmarking has occurred. Moreover, respondents DPH and MDP have provided sworn affidavits (which attach a copy of checks of all contributions received by the committee in response to a solicitation by the Matt Brown campaign) that specifically refute any allegation of earmarking.

Finally, it should be noted that, notwithstanding the fact that the complaint in this matter is without merit, both the DPH and MDP have refunded all contributions received in response to a solicitation by the Matt Brown campaign. Furthermore, the Matt Brown campaign has refunded contributions made by the DPH and MDP to the campaign. Also, it is our understanding that Matt Brown is no longer a candidate for the Democratic nomination for United States Senator from Rhode Island.

Based upon the above, the Commission should find no reason to believe the complaint and close the file in this matter.

Respectfully submitted,



Neil P. Reiff  
Stephen E. Hershkowitz  
Counsel to the Democratic Party of Hawaii and the  
Maine Democratic Party

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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

<b>IN RE</b>	)
<b>Democratic Party of Hawaii</b>	)
	)
<b>and</b>	)
	)
<b>Yuriko J. Sugimura, as Treasurer</b>	)

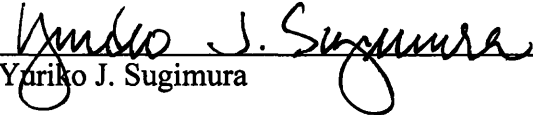
**DECLARATION OF YURIKO J. SUGIMURA**

1. I am the Treasurer of the Democratic Party of Hawaii ("DPH"). I have held this position since May 29, 1994.
2. As Treasurer, it is my responsibility to receive and deposit all contributions to the DPH.
3. On or about January 17, 2006, the DPH received a contribution from a Richard Bready in the amount of \$6,000.00. The contribution was deposited into the federal account of the DPH on January 17, 2006.
4. The contribution from Mr. Bready did not contain any cover letter and the check did not contain any reference to Matt Brown or any other campaign (See attached copy of check as Exhibit A).
5. I have had no contact with Mr. Bready, nor, to my knowledge, has any other employee or officer of the DPH.

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I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief.

Dated this 7<sup>TH</sup> day of June, 2006 in Honolulu, Hawaii.

  
Yuriko J. Sugimura

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# EXHIBIT A

...



RICHARD L. BREADY  
SPECIAL ACCOUNT

08-62

878

Date 1/4/06

67-1/18

Pay to Hawaii Democratic Party \$ 600.00  
the Order of for thousand and 00/100 Dollars

Bank of America



ACH/EFT 011500010

The Private Bank

Richard L. Bready

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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

**IN RE  
Maine Democratic State Committee**

**and**

**Betty L. Johnson, as Treasurer**

**DECLARATION OF MAGGIE ALLEN**

1. I am the Executive Director of the Maine Democratic State Committee ("MDP"). I have held this position since January 22, 2006. Prior to that, I was the Finance director beginning in January 2005. I was the interim Executive Director from December 13, 2005 until January 22, 2006.

2. As Executive Director, it is my responsibility to supervise the process of receiving and depositing all contributions received by the MDP.

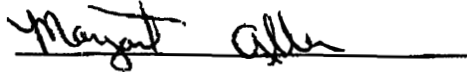
3. On January 12, 2006, the MDP received a contribution from a Richard Bready in the amount of \$6,000.00. The contribution was deposited into the non-federal account of the MDP on January 12, 2006. On January 17, 2006, the MDP received a credit card contribution from Jeannie Lavine in the amount of \$6,000 via the Internet. The contribution was deposited into the non-federal account of the MDP on January 18, 2006.

4. The contributions from Mr. Bready and Ms. Lavine did not contain any cover letter and the check from Mr. Bready did not contain any reference to Matt Brown or any other campaign (See attached copy of Bready check, and Internet processing form of Ms. Lavine as Exhibit A).

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5. I have had no contact with Mr. Bready, or Ms. Lavine, nor, to my knowledge, has any other employee or officer of the MDP.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 9<sup>th</sup> day of June, 2006.



Maggie Allen

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# EXHIBIT A



## Claire Pomerleau

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**From:** webforms  
**Sent:** Tuesday, January 17, 2006 4:19 PM  
**To:** books  
**Cc:** jkarust.  
**Subject:** Contribution

First Name: Jeanne.  
Last Name: Lavine.  
Address:  
City: Lexington.  
State: Massachusetts.  
Zip: 02420.  
Phone Home:  
Phone Work:.  
Occupation:  
Employer: None.  
Email:.  
Additional Info:.  
Credit Card:.  
Credit card:.  
Credit card:  
Name on Card: Jeanne B Lavine.  
Amount:..  
Amount:..  
Amount:..  
Amount:..  
Amount:..  
Amount:..  
Amount:..  
Amount:..  
Other Amount: 6000.  
OR Charge Account Monthly:..  
Number of Months:..  
Amount Per Month:..  
Number:  
Expiration:

RICHARD L. BREADY  
SPECIAL ACCOUNT

00-82

870  
57-1/115 R  
10162

Date 1/4/06

Pay to the Order

Maene Democratic Party

\$ 6,000 <sup>7</sup>/<sub>10</sub>

Dollars

America

First Minute Bank

Richard L. Bready

NORTEK

RICHARD L. BREADY  
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

NORTEK, INC. 50 KENNEDY PI AZA  
PROVIDENCE, RHODE ISLAND 02803-2360  
401 751-1800 FAX 401 751-4610

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